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No. 08-614

# In the Supreme Court of the United States

QWEST COMMUNICATIONS INTERNATIONAL, INC.; JOHN A. MCMASTER; ROBERT S. WOODRUFF; JOSEPH P. NACCHIO,
*Cross-Petitioners,*

v.

MARCEL WINDT; E.T. MEIJER, IN THEIR CAPACITY AS TRUSTEES IN BANKRUPTCY FOR KPNQWEST, N.V.,
*Cross-Respondents.*

*On Cross-Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit*

## CONDITIONAL CROSS-PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

Whether, if the Court grants the Petition for certiorari and reverses the *forum non conveniens* dismissal, the Court should grant this Cross-Petition, reverse the Third Circuit's ruling that the cross-appeal of the arbitration issue is moot, and remand this case to the Third Circuit?

## RULE 29.6 STATEMENT

Qwest Communications International Inc. has no parent corporation, and no publicly held company owns 10% or more of its stock.

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## CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI

Qwest Communications International Inc. ("Qwest"), John A. McMaster, Joseph P. Nacchio, and Robert S. Woodruff (collectively "Cross-Petitioners") respectfully cross-petition for a writ of certiorari, to be granted only if this Court grants the Petition of Marcel Windt and E.T. Meijer, trustees in bankruptcy for KPNQwest, N.V., for a writ of certiorari.

## OPINIONS BELOW

The opinion of the Third Circuit below is reported at 529 F.3d 183 (3d Cir. 2008) and reprinted in the Appendix to the Petition at 1a-34a.

The district court's decision dismissing this case on *forum non conveniens* grounds is reported at 544 F. Supp. 2d 409 (D.N.J. 2008) and reprinted in the Appendix to the Petition at 38a-98a. The district court's decision affirming the Magistrate Judge's decision not to compel arbitration is unreported and is reprinted in the Appendix to the Cross-Petition at 1a-9a. The Magistrate Judge's decision denying Cross-Petitioners' motion to compel arbitration is unreported and is reprinted in the Appendix to the Cross-Petition at 10a-42a.

## JURISDICTION

The Third Circuit affirmed the district court's *forum non conveniens* dismissal and dismissed as moot the cross-appeal of the district court's decision not to compel arbitration on June 10, 2008. The Third

Circuit denied Petitioners' petition for rehearing and rehearing *en banc* on July 14, 2008. Petitioners' Petition for a writ of certiorari was docketed in this Court on October 3, 2008. This conditional Cross-Petition for a writ of certiorari is being timely filed pursuant to Rule 12.5 of the Rules of the Court. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

## STATEMENT OF THE CASE

After Petitioners sued Cross-Petitioners in the district court, Cross-Petitioners timely moved to compel arbitration. The Magistrate Judge denied that motion and Cross-Petitioners appealed the ruling to the district court. With the appeal of the arbitration ruling pending, Cross-Petitioners moved to dismiss Petitioners' lawsuit, *inter alia*, on *forum non conveniens* grounds.

The district court affirmed the Magistrate Judge's ruling on the motion to compel arbitration and dismissed Petitioners' lawsuit on *forum non conveniens* grounds. Petitioners timely appealed from the district court's *forum non conveniens* dismissal, and Cross-Petitioners timely cross-appealed the district court's decision not to compel arbitration.

The Third Circuit affirmed the district court's *forum non conveniens* decision, and dismissed the cross-appeal as moot.

Petitioners now seek a writ of certiorari, arguing that the Third Circuit wrongly affirmed the district court's *forum non conveniens* dismissal. For the

reasons that will be set forth in Cross-Petitioners' Opposition to the Petition, which will be filed by December 3, 2008 pursuant to this Court's order dated October 21, 2008, this case was properly dismissed under the *forum non conveniens* doctrine, and this Court should deny the Petition.

If this Court does grant the Petition to review and reverses the *forum non conveniens* dismissal, however, the Court should grant this Cross-Petition, summarily reverse the Third Circuit's ruling that the cross-appeal of the arbitration issue is moot, and remand this case to the Third Circuit for a decision on that issue. The jurisdiction of the district court was invoked under 28 U.S.C. § 1331.

## REASONS FOR GRANTING THE CONDITIONAL CROSS-PETITION

The Third Circuit below was presented with two issues: (1) an appeal from the district court's *forum non conveniens* dismissal and (2) a cross-appeal from the district court's decision not to compel arbitration. The Third Circuit never considered the cross-appeal on the merits because, in affirming the *forum non conveniens* dismissal, it mooted the issue. If this Court reverses and remands the Third Circuit's dismissal, however, the Third Circuit should consider the cross-appeal on the merits.

Cross-Petitioners do not seek any substantive review of the arbitration issue by this Court. Rather, Cross-Petitioners seek a writ of certiorari as a purely prophylactic measure to ensure that, if the *forum non conveniens* dismissal is reversed, the Cross-Petitioners

can, if necessary, obtain review of the arbitration issue on the merits before the Third Circuit.

## CONCLUSION

If the Petition for a writ of certiorari is granted, this Cross-Petition should also be granted. If the Court denies the Petition, this Cross-Petition would be moot.

Respectfully submitted.

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